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SUBJECT: GRZ PROVIDES SOME ANSWERS ON LEGAL ASPECTS OF  
UPCOMING PRESIDENTIAL ELECTION; DATE TBD

REF: A. LUSAKA 838

[B](#). LUSAKA 827

[C](#). LUSAKA 825

[1](#). Summary. The Zambian government (GRZ) will respect the constitutionally-mandated 90-day timeline for a presidential election and will announce the date of the polls after consultations between the Treasury and the Electoral Commission of Zambia, Justice Minister George Kunda announced on August 21. Due to a complex web of constitutional provisions, voters will choose a president who will de factor serve out the remainder of deceased President Mwanawasa's term, which was set to expire in 2011. The Electoral Commission of Zambia will be hard pressed to meet the tight deadline and may be forced to make some compromises in terms of voter rolls and other logistical arrangements. End summary.

[2](#). Justice Minister George Kunda appeared on national television on August 21 to announce the GRZ's interpretation of the legal structures relating to the upcoming presidential elections necessitated by the death of President Mwanawasa. Kunda affirmed that the GRZ will strictly adhere to the Constitutionally-mandated timeline of elections within 90 days of the office becoming vacant, and said that the government would announce the date of the elections following consultation between the Treasury and the Electoral Council of Zambia.

[3](#). Kunda directly confronted the issue of whether the winner of the upcoming election will serve out the existing term of the deceased president, which would mean serving until 2011, or if the clock will start again on a full five-year term. The Constitution is not clear on this matter, and in last night's address Kunda ran through the reasons why the upcoming election will only be for a three-year term to expire in 2011.

[4](#). According to Article 38 of the Constitution, when the office of the President becomes vacant for whatever reason, "an election to the office of President shall be held...within ninety days from the date of the office becoming vacant." Nowhere does it specify whether the election is for a full term or for the remainder of the previous incumbent, however. Mwanawasa was elected to his second, and Constitutionally-mandated final, term in September 2006, meaning his term was set to expire in 2011.

[5](#). Even without directly addressing the issue of the new president's tenure, however, the Constitution does contain a series of provisions that, taken together, make a five-year term impossible in this case. Article 88, section 6 of the Constitution indicates that the National Assembly can be dissolved in three ways: at any time by the President, on two-thirds majority resolution of the members, and when its five-year term elapses. Article 88, section 7 goes on to explain that whenever the National Assembly is dissolved, both parliamentary and presidential elections must occur. These provisions ensure that presidential and parliamentary

terms are concurrent and create a strong disincentive for an incoming president to dissolve parliament early.

¶6. Lest Acting President Rupiah Banda be tempted to dissolve the National Assembly now in order to force Parliamentary elections this year, Article 38, section 3 bars him from doing so. As a last safeguard, Article 38, section 2 provides that "a person who has twice been elected as President shall not be eligible for re-election to that office." Whoever is elected president next therefore has a strong incentive to keep his peace and serve out the remainder of Mwanawasa's term, in order to be eligible to run for another five-year term in 2011.

¶7. The Electoral Commission of Zambia has begun to meet with the Treasury and with donors to talk about funding for the upcoming election, but is unlikely to announce an election date until after the 21-day mourning period ends on September 8. Secretary of the Treasury Chibiliti announced the GRZ should fund the election from the existing 2008 budget by sacrificing unspecified discretionary funding. Initial indications are that ECZ intends to use the 2006 voter rolls to conduct the election, particularly as the GRZ has failed in its legal responsibility to maintain current rolls and it would be almost impossible to update the rolls before the election. The 2006 rolls, which contained approximately 3.9 million voters, were the source of many complaints due to high levels of errors. These rolls will not reflect deaths that have taken place since they were closed in September 2006, and will not include those who have turned 18 since that time, or relocated to new voting districts.

¶8. Comment. Kunda's intervention was timely and necessary to quell debates about the tenure of the incoming president, and his assurance that the GRZ will honor the Constitution's 90-day timeline for an election was reassuring from the point of view of good governance. Questions regarding the election are only going to multiply in the coming weeks, however. The GRZ has a grace period until the end of the mourning period on September 8, but after that and with only 69 days remaining, an election date will need to be announced and preparations will have to be made at an un-Zambian breakneck speed. The use of 2006 voter rolls is the first of many controversial decisions, and without the firm hand of a sitting President, there are possibilities for electoral mischief. End comment.

KOPLOVSKY